

NOWELL AMOROSO KLEIN BIERNAN, P.A.
COUNSELLORS AT LAW

155 POLIFLY ROAD
HACKENSACK, NEW JERSEY 07601
(201) 343-5001
Facsimile: (201) 343-5181

E-Mail: info@nakblaw.com

New York Office
PMB 46028
140 Broadway
New York, NY 10005
(212) 858-7710
Facsimile: (212) 858-7750

July 31, 2008

DANIEL C. NOWELL
HENRY J. AMOROSO
HERBERT C. KLEIN
WILLIAM D. BIERNAN
VICTOR J. MERLINSKY, JR.
ANTHONY PANTANO*
DAVID EDELBURG*
LINDA DUNNE
MICHAEL J. PALMA*
MICHAEL J. NOONAN
WILLIAM C. SOUKAS*
BRADLEY M. WILSON†
JOHN R. LLOYD
THOMAS C. MARTINI

RICK A. STERNBERG*
JOSEPH S. SHERMAN
DAVID V. NASTA

TIMOTHY J. BARTZOS
GREGORY K. ASADURIAN
RONALD D. BULLOCK
JOHN P. MARZOLLA*
ANTHONY J. MAHONEY*
YANA CHECHELITSKY*
LORE E. KOHN*
LISA J. JUREK
MICHELLE E. RADIN*

ARTHUR MINUSKIN
ANTHONY J. FRIESE
KAREN A. PASSARO
JOHN G. HUDAK
OF COUNSEL

* Also Admitted in NY
† Also Admitted in the
Federal Courts in NY
Also Admitted in PA

MEMO ENDORSED

VIA FACSIMILE ONLY @ (212) 805-7949

Honorable P. Kevin Castel, U.S.D.J.
Daniel Patrick Moynihan
United States Courthouse
500 Pearl St., Room 2260
New York, NY 10007

<p align="center">USDS SDNY DOCUMENT ELECTRONICALLY FILED</p> <p>DOC #: _____</p> <p>DATE FILED: <u>8/4/08</u></p>

Re: Mitsui Sumitomo Ins. Co., Inc. v. Roadway Express, Inc.
Civil Action No. 08-cv-05700 (PKC)
Our File No.: 2548.059

Dear Judge Castel:

We write in reference to the Motion to Dismiss [Doc. 4] filed on behalf of our client Roadway Express, Inc. ("Roadway"). The motion to dismiss was filed with the court on July 28, 2008 which was Roadway's response date after being served with the summons and complaint on July 8, 2008. In reviewing your Honor's Individual Rules of Practice, it appears that Rule 2.A.1. and 2.A.2. may require a pre-motion conference with the court prior to the filing of a motion to dismiss.

Because Roadway was required to file its motion to dismiss within twenty (20) days after service of the summons and complaint or risk being time barred from filing its motion; Roadway filed its motion to dismiss without requesting a pre-motion conference. Roadway's decision to file its motion to dismiss without first requesting a pre-motion conference was done solely out of necessity given the timing of Roadway's response date and the lack of time on the part of Roadway to request a pre-motion conference.

Roadway understands the importance and necessity for compliance with the Court's rules and meant no disrespect to your Honor by filing its motion to dismiss without first requesting a

pre-motion hearing. If your Honor would prefer that Roadway request a pre-motion conference, Roadway will comply with that directive and promptly submit its letter requesting a pre-motion conference.

Roadway will contact Plaintiff's counsel and explore the possibility of Plaintiff voluntarily amending its Complaint to properly state a cause of action under 49 U.S.C. § 14706 (the "Carmack Amendment"). If Plaintiff agrees to amend its Complaint, Roadway will stipulate to the amendment of the Complaint and will withdraw its motion to dismiss.

We thank the Court for its attention to this matter.

Respectfully submitted,

Nowell Amoroso Klein Bierman, P.A.

Thomas C. Martin
Thomas C. Martin

TCM/bb

Cc: Michael P. Hartman, Esq. (via facsimile only)

*Motion to dismiss
deemed withdrawn without
prejudice to refiling after
August 28 conference.
Parties should discuss amendment of complaint
on consent. Defendant's true to
answer or move adjourned to a date
to be set at the August 28 conference
which will also be a pre-motion
conference.*

*SO ORDERED
JBS
8-4-08*

USDT